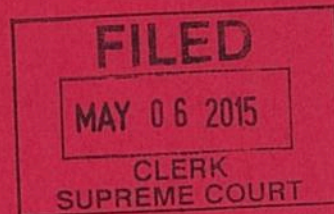


COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
2015-SC-000581



GARRARD COUNTY, KENTUCKY;  
JOHN WILSON; JOE LEAVELL;  
DOAN ADKINSON; RONNIE LANE;  
FRED SIMPSON; AND BETTY HOLTZCLAW

APPELLANTS

v.

*ON APPEAL FROM THE COURT OF APPEALS  
CASE NO. 2014-CA-00187-MR*

KEVIN MIDDLETON

APPELLEE

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**APPELLANTS' BRIEF**

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Respectfully Submitted,

WALTHER, GAY & MACK, PLC

A handwritten signature in blue ink, appearing to read "J. Gay", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that the original and ten (10) copies were hand-delivered to the Kentucky Supreme Court and true and accurate copies of the foregoing were served upon the following via U.S. Mail, postage prepaid on this 6<sup>th</sup> day of May, 2016: Hon. J. Paul Long, Jr., 324 West Main Street, P.O. Box 85, Stanford, Kentucky 40484; Hon. Gerry L. Calvert, II, Calvert Law Group, 117 West Short Street, Lexington, Kentucky 40507; and Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601.

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COUNSEL FOR APPELLANTS

## INTRODUCTION

This case involves an appeal by Garrard County, Kentucky and relates to whether the Garrard County Fiscal Court has the statutory authority to set the salary of its jailer, who does not operate a full-service jail, from term to term and prior to any new term at any amount between the statutory minimum annual salary of \$20,000 and the constitutional maximum annual salary allowed to jailers in the Commonwealth of Kentucky pursuant to KRS 441.245(3).

### STATEMENT CONCERNING ORAL ARGUMENT

Appellants believe that oral argument is unnecessary and that the briefs submitted to this Court and the lower court sufficiently address the issues before the Court.

However, in the event that the Court believes oral argument would be beneficial in deciding the issues presented, Appellants certainly welcome the opportunity.

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## APPENDIX

### STATEMENT OF THE CASE

This case is an appeal from the Court of Appeals and pertains to the proper salary of the Garrard County Jailer, Kevin Middleton (hereinafter "Appellee"). (See Court of Appeals Opinion attached hereto as **Exhibit 1**). In Kentucky, all jailers are elected officials that serve for a term of four (4) years. (See Ky. Const. 99). In certain counties, jailers are responsible for the operation of full-service jails; in those counties, the jailer's salary is dictated by statute. (See KRS 64.535, KRS 64.5275 and KRS 441.245(1)). In other counties, such as Garrard County, there is no full-service jail, and the jailer's duties generally encompass the transporting of inmates to and from neighboring counties for court proceedings or serving as bailiff. In counties without a full-service jail, the jailer's salary is established by the county's fiscal court. (See KRS 411.245(3) and KRS 441.025).

The election for Garrard County Jailer first relevant to this action occurred in 2006, when Respondent's predecessor, Mr. Kenny Tuggle, was re-elected for his third term in office. Mr. Tuggle's salary as jailer, which had steadily increased since he was first elected in 1994, was set by the Garrard County Fiscal Court at \$28,596.72 on or about April 10, 2006. Mr. Tuggle voluntarily resigned at the end of 2008, rendering the office vacant.

Subsequent to Mr. Tuggle's resignation, Appellee approached Appellant John Wilson, Garrard County Judge/Executive (hereinafter "Judge Wilson"), to inquire about the duties and compensation of the vacant position. Judge Wilson informed Appellee that, while it was Mr. Tuggle's practice to report to the courthouse on a daily basis, maintain regular courthouse hours, and devote his full-time efforts to the office of jailer, Appellee would not be required to report to the courthouse every day and would be called upon only as necessary to transport inmates. Appellee then agreed, without objection, to fulfill the duties of the position at an annual salary of

\$20,000.00. Pursuant to KRS 63.220, Appellee was appointed as the Garrard County Jailer to serve for the remainder of Mr. Tuggle's term, *i.e.*, until the next-scheduled election in 2010.<sup>1</sup>

Prior to the 2010 election, the Garrard County Fiscal Court set the salary for the next jailer's term at \$20,300.02. This salary, of course, was public record and would be applicable without regard to the person elected. Appellee ran for and was elected to the position of Garrard County Jailer in November of 2010.

On or about April 21, 2012, Appellee filed a lawsuit in the Garrard Circuit Court and alleged that his salary for the years 2009 and 2010 (while serving out the remainder of Mr. Tuggle's term as jailer) and the years 2011 to present (while serving his elected term as jailer) was "at an amount less than the salary he should have received" pursuant to the Kentucky Constitution and the Kentucky Revised Statutes.

On October 18, 2013, the Garrard Circuit Court entered a judgment both for and against Appellants. The Garrard Circuit Court granted judgment in favor of Appellee regarding his compensation during his appointed term from January 21, 2009 to December 31, 2010. The Garrard Circuit Court further granted judgment in favor of Appellants regarding Appellee's compensation during his elected term, holding that "pursuant to KRS 441.245(3), the Garrard County Fiscal Court has the statutory authority to set the salary of the Jailer from term to term and prior to any new term at any amount between the statutory minimum annual salary of \$20,000.00 and the constitutional maximum annual salary allowed to jailers in the Commonwealth of Kentucky." (See Garrard Circuit Court Order entered October 18, 2013 attached hereto as **Exhibit 2** at 2).

The Garrard Circuit Court amended its Order on January 3, 2014, to clarify the amount of damages owed Respondent for his appointed term, \$20,510.00 plus pre and post-judgment

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<sup>1</sup> Many of the facts relevant to this matter have been stipulated by the parties.

interest. (See Garrard Circuit Court's Order Amending Judgment attached hereto as **Exhibit 3** at 1). Thereafter, Appellee appealed the Garrard Circuit Court's decision to the Kentucky Court of Appeals. The Court of Appeals reversed the lower court's decision refuting that the local fiscal court has the authority to change the salary set for a jailer, who does not operate a full-service jail, between terms. In reaching this conclusion, the Court of Appeals failed to recognize that this is a matter of first impression in Kentucky, as there has been no case law interpreting KRS 441.245(3). The Court of Appeals incorrectly relied on the case *Wallace v. King*, 973 S.W.2d 485 (Ky. App. 1998), which interpreted KRS 441.245(4), a provision that has since been deleted from the present version of KRS 441.245. In fact, the version of KRS 441.245 interpreted by *Wallace* was **repealed in 1998!** The current version of the statute significantly changed the compensation structure of jailers in the Commonwealth and is therefore separate and distinct from the pre-1998 statute that the Court of Appeals relied upon.

### **ARGUMENT**

#### **I. THE FISCAL COURT ESTABLISHES THE DUTIES AND SETS THE COMPENSATION OF JAILERS WHO DO NOT OPERATE FULL SERVICE JAILS**

For over one hundred twenty (120) years, the Commonwealth of Kentucky has clearly recognized that a jailer is not a necessary or required public office. All of the duties of a jailer may be efficiently performed by the sheriff. (See Ky. Const. 105). Since at least 1881, the Commonwealth of Kentucky has reserved to the General Assembly the right to eliminate the office of jailer, and require the sheriff to perform the duties of jailer. Section 105 of the Constitution of Kentucky provides that:

The General Assembly may, at any time, consolidate the offices of Jailer and Sheriff in any county or counties, as it shall deem most expedient; but in the event such consolidation be made, the office of Sheriff shall be retained, and the Sheriff shall be required to perform the duties of Jailer.

In Kentucky, there are seventy-five (75) full-service county jails. Kentucky is comprised of one hundred twenty (120) counties, so it begs the question what do jailers do in counties that do not have a full-service jail. These jailers are not managing a jail, do not have inmates under their custody, do not have regular hours, do not have deputies, do not supervise any employees, and do not procure any assets or manage a budget. The fiscal courts in these counties have several options depending upon the local circumstances. First, the fiscal court could request the General Assembly to consolidate the offices of Jailer and Sheriff and have all duties performed by the Sheriff. (*See Ky. Const. 105*). Second, the fiscal court may, under its transportation plan, require the jailer to transport inmates from a jail in another county to court. (*See KRS 441.510(4)*). Third, if the fiscal court does not wish to have the jailer transport inmates, the jailer, by operation of law, shall serve as a bailiff to the Circuit and District Courts. (*See KRS 71.050*). Fourth, the fiscal court may contract with the jailer to serve as a custodian for public buildings. (*See KRS 67.130*).

The duties and compensation of a jailer who does not operate a full service jail is left to the fiscal court. The fiscal court must pay the jailer an annual salary of \$20,000.00 and may pay the jailer more depending on the duties and responsibilities of the jailer. (*See KRS 441.245(2), (3)*). If the duties of the jailer change during his four (4) year term, the fiscal court must continue to pay the jailer the same salary set by the fiscal court before the term began, but may change the salary from term to term depending on the reasonableness of the salary based upon current circumstances. (*See KRS 441.245(3)*).

The duties and compensation of jailers in counties without a jail is, and should be, a local issue. The General Assembly, under the Home Rule Statute, has delegated to the fiscal court the

authority and responsibility to “[r]egulate and control the fiscal affairs of the county.” (See KRS 67.080(1)(c)). The fiscal court is responsible for allocation of public funds and for efficient management of government.

Appellee would have this Court misinterpret the clear meaning and intent of KRS 441.245 in a manner that would improperly remove the power of the fiscal court to maintain control and authority over the duties of the jailer and compensation of the jailer by requiring an ever-increasing salary for the jailer regardless of any changes in circumstances or duties from term to term. This would place a jailer in a county which does not have a jail in a better financial position than a jailer operating a full-service jail. A jailer who operates a full-service jail can have his salary reduced term to term based upon a decrease in population of a county or a decrease in the consumer price index (KRS 64.5275(2),(3)), while under Appellee’s interpretation, the jailer who does not operate a full-service jail can never have his salary reduced from term to term. This provides unjust protection to jailers who do not operate a full-service jail.

**II. IN COUNTIES WITHOUT A JAIL, THE FISCAL COURT HAS THE RESPONSIBILITY TO TRANSPORT PRISONERS TO AND FROM JAILS LOCATED IN OTHER COUNTIES AND MAY SET THE JAILER’S SALARY FROM TERM TO TERM AT ANY AMOUNT BETWEEN TWENTY THOUSAND DOLLARS (\$20,000.00) AND THE CONSTITUTIONAL MAXIMUM**

KRS 67.080 and KRS 67.083(3) provide broad powers to Kentucky county governments to manage the affairs of the county. KRS 67.080 provides that the “fiscal court shall . . . [p]rovide for the incarceration of prisoners according to the provisions of Chapter 441.” KRS 67.083(3)(e) also provides that the fiscal court “shall have the power to carry out governmental functions necessary for the operation of the county,” including “the provision of correction facilities and services.” The Kentucky Supreme Court has held that:

The purpose of KRS 67.083 is to provide counties with the necessary latitude and flexibility to finance various governmental services specified in subsection 3 while retaining the authority of the General Assembly to limit by statute local governmental activities. . . . Any limitation cannot be implied and must be an express restriction.

*Casey Cnty. Fiscal Court v. Burke*, 743 S.W.2d 26, 27 (Ky. 1988) (emphasis added); see also *Phipps v. Commonwealth*, 933 S.W. 2d 825 (Ky. App. 1996).

The case at bar involves the power and authority of the fiscal court to manage the fiscal affairs of the county with regard to the incarceration of prisoners under Chapter 441. The court is guided by the general purpose of the Home Rule Statute which is to provide “latitude and flexibility” to the fiscal court in exercising fiscal responsibility over the incarcerations of prisoners. Pursuant to KRS 441.025(2)(c), the fiscal court can meet its obligation of providing for the incarceration of prisoners by “[c]ontracting with another county or a city for the incarceration and care of its prisoners” and “[p]roviding for the transportation of prisoners.” The Kentucky Court of Appeals has held that there are no statutes that “specifically require the fiscal court in each county to provide a county-owned, county-operated and county-maintained jail.” *Commonwealth v. Carroll Cnty. Fiscal Court*, 633 S.W. 2d 720, 721 (Ky. App. 1982).

The fiscal court has authority to close a jail which not only reduces the financial burden of maintaining a jail, but also provides flexibility for the fiscal court to set the jailer’s salary at levels different than jailers who operate a full-service jail. (See KRS 441.245(3)). There is no express restriction on the authority of the fiscal court to manage the transportation of prisoners under KRS 67.080, KRS 67.083 and KRS 441.025, or the fiscal responsibilities associated therewith.

In *Dunaway v. DLX, Inc.*, the Kentucky Court of Appeals provided the following statutory construction guidelines:

‘The essence of statutory construction is to ascertain and give effect to the intent of the legislature.’ If possible, we should attempt to do this by looking at the plain language of the statute. However, where there is an apparent conflict within the statute or where sections of a statute are incongruous with one another, it is the duty of the courts to harmonize the conflicting provisions in order to give effect to both. This principle of construction is consistent with the rule that we will not read a statute strictly or literally where to do so would lead to an unreasonable result.

113 S.W.3d 632, 635 (Ky. App. 2002) (footnote omitted). See also *Spencer v. Estate of Spencer*, 313 S.W.3d 534, 541 (Ky. 2010) (“We also presume that the General Assembly did not intend an absurd statute . . . if a plain reading of the statute yields a reasonable legislative intent, then that reading is decisive and must be given effect.”) (citations omitted).

### **III. THE GARRARD CIRCUIT COURT CORRECTLY HELD THAT THE PLAIN LANGUAGE OF KRS 441.245 AUTHORIZES THE FISCAL COURT, FROM TERM TO TERM, TO SET THE SALARY OF JAILER**

The Garrard Circuit Court correctly held that the plain language of KRS 441.245 authorizes the fiscal court, from term to term, to set the salary of jailer. KRS 441.245 reads as follows:

- (1) The jailer who operates a full service jail shall receive a monthly salary pursuant to any salary schedule in KRS Chapter 64 applicable to jailers operating a full service jail from the county jail operating budget.
- (2) No jailer holding office in the Commonwealth on or after January 6, 1999, shall receive an annual salary of less than twenty thousand dollars (\$20,000).
- (3) The salaries of jailers who are not subject to any salary schedule in KRS Chapter 64 may be set at a higher level if the salary does not exceed the constitutional salary limit applicable to jailers. These jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to the provisions of KRS 64.527.

The issue before the Court is whether a local fiscal court may set the salary of a jailer, who does not operate a full-service jail, from term to term pursuant to KRS 441.245. This statute

addresses four (4) distinct issues. It clearly provides that: (1) jailers who operate a full service jail shall be compensated pursuant to a compensation schedule set by the General Assembly (KRS 441.245(1)); (2) all jailers shall be paid at least \$20,000.00 (KRS 441.245(2)); (3) jailers who do not operate a full-service jail may be paid more than \$20,000.00 provided it does not exceed the constitutional maximum (KRS 441.245(3)); and (4) the fiscal court may adjust the annual salary during the term of the jailer based upon an adjustment in the value of the dollar due to changes in the consumer price index (the “rubber dollar doctrine”). (See KRS 441.245(3)).

More specifically, this case focuses on the meaning of Paragraph (3) of KRS 441.245. The first sentence of KRS 441.245(3) authorizes the fiscal court to “set” the salary of the jailer at an amount higher than \$20,000.00. Appellee does not dispute the authority of the fiscal court to set the salary between \$20,000.00 and the constitutional maximum. The second sentence of KRS 441.245(3) provides that “[t]hese jailers’ salaries shall at least equal the prior year’s level and may be adjusted by the fiscal court for the change in the prior year’s consumer price index according to the provisions of KRS 64.527.” This sentence is included in the statute for the sole purpose of allowing the fiscal court to increase the salary during the term without violating Sections 161 and 235 of the Kentucky Constitution.

Sections 161 and 235 of the Kentucky Constitution do not allow the compensation of a public official to be changed during his term in office. The prohibition of “change” includes a reduction or an increase. However, the Kentucky Court of Appeals and Supreme Court of Kentucky has determined that an increase in a public officer’s salary during his term of office does not violate the Kentucky Constitution, provided the increase is based upon a change in the value of the dollar or its purchasing power. See *Carey v. Washington Cnty. Fiscal Court*, 575 S.W.2d 161, 163 (Ky. App. 1978) (“It is clear that the rubber dollar doctrine is applicable to

county officers.”); see also *Commonwealth v. Hesch*, 395 S.W.2d 362, 363 (Ky. 1965) (A salary increase during the term of office does not violate 161 and 235 of the Kentucky Constitution provided it is an increase to keep abreast of the initial value of the dollar or purchasing power of the dollar.). This increase is known as the “rubber dollar doctrine” which was first adopted in *Kentucky in Matthew v. Allen*, 360 S.W.2d 135 (Ky. 1962). This rubber dollar doctrine is only applicable if the Generally Assembly makes it applicable in the statute setting the salary of the public official. *Carey*, 575 S.W.2d at 163 (“[I]t is also clear that the legislature must act affirmatively in order to put the rubber dollar doctrine into application.”).

In order to make the rubber dollar doctrine applicable to the salary of jailers who do not operate a full-service jail, the Generally Assembly must do two things. First, the statute must not allow for a decrease during the term and, second, it must reference a means to increase the salary based upon changes in the consumer price index. KRS 441.245(3) accomplishes both of these objectives. First, it references KRS 64.527 which provides that:

The Department for Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index.

(emphasis added). The Department of Local Government (hereinafter “DLG”) reports the change in the consumer price index to the fiscal court, which could be higher or lower than the prior year. This change could lower the constitutional maximum salary for a jailer, and therefore, the fiscal court must be aware of this reduction in the constitutional maximum when it sets the salary from term to term. However, in order to conform to Sections 161 and 235 of the Kentucky Constitution, the General Assembly cannot allow the fiscal court to reduce the salary during the term of office in the event the consumer price index decreases during the term. Therefore, the General Assembly requires that “[t]hese jailers salary’s must at least equal the

prior year's level [which prohibits a downward adjustment during the term] and may be adjusted in accordance with KRS 64.527 [which allows an upward adjustment]." KRS 441.245(3).

Without this sentence, the fiscal court would be prohibited from providing a rubber dollar adjustment during a jailer's term in office.

As the Supreme Court stated in *Spencer, supra*, "if a plain reading of the statute yields a reasonable legislative intent, then that reading is decisive and must be given effect." (*Id.* at 541) (emphasis added). Contrary to this plain reading of KRS 441.245(3), Appellee advocates a reading of the statute which will limit the power of the fiscal court to manage the affairs of the county and will "lead to unreasonable results" or result in "absurd consequences."

#### **IV. THE KENTUCKY COURT OF APPEALS MISAPPLIED THE GOVERNING PRINCIPLES OF STATUTORY INTERPRETATION AND SHOULD BE REVERSED**

The Kentucky Court of Appeals failed to adhere to the principles of statutory interpretation. First, the plain meaning of the statute as advocated by Appellants "yields a reasonable legislative intent" of local control to set salaries from term to term and the authority to adjust salaries during the term. Appellee's reading of the express terms yields "absurd consequences" because it removes the power of the fiscal court to control the local affairs and make adjustments based upon the duties and responsibilities of the jailer from term to term. Second, the court ignored the principles of reading the plain meaning in a rational manner and avoiding unreasonable results and proceeded to construe the statute strictly without regard to legislative history or other principles of statutory construction. Thereby, the Court of Appeals violated the rule that a court "will not read a statute strictly or literally where to do so would lead to an unreasonable result." *Dunaway v. DLX, Inc.*, 113 S.W.3d 632, 635 (Ky. App. 2002).

The Court of Appeals explained that its interpretation of KRS 441.245 was limited to a review of its plain meaning because, in its words, “[o]nly when the plain meaning of the statute’s language is ambiguous do we depart from a strict reliance on the words of the legislature.” (*See Exhibit 1* at 8 (emphasis removed and citation omitted)). In so doing, the Court of Appeals determined that it was “constrained by the patent language used by the General Assembly, regardless of whether we like the outcome” and held that the plain meaning of KRS 441.245(3) does not authorize a reduction in the salary of a jailer between terms. (*Id.* at 13).

Assuming for the sake of argument that KRS 441.245 is unambiguous, as the Court of Appeals determined, the limitation by which it constrained its review of the statute is in direct contravention with long-standing Kentucky precedent, which holds that a court need only look to the plain language of the statute unless the plain meaning “would produce an injustice or ridiculous result.” *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005). If the latter is the case, the courts are directed to “ignore the plain meaning of a statute” and look to other sources or methods to interpret the statute. *Id.*<sup>2</sup>

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2 *See also Autozone, Inc. v. Brewer*, 127 S.W.3d 653, 655 (Ky. 2004) (“[A] statute is open to construction only if the language that is used is ambiguous and requires interpretation. If the language is clear and unambiguous and if applying the plain meaning of the words would not lead to an absurd result, further interpretation is unwarranted.”); *Executive Branch Ethics Com’n v. Stephens*, 92 S.W.3d 69, 73 (Ky. 2002) (“If there is any doubt from the language used by the legislature as to the intent and purpose of the law, then courts in interpreting the statute should avoid a construction which would be unreasonable and absurd in preference to one which is reasonable, rational, sensible and intelligent. The words of the statute are to be given their plain meaning unless to do so would constitute an absurd result.”) (citation omitted); *Johnson v. Frankfort & Cincinnati R.R.*, 197 S.W.2d 432 (Ky. 1946) (“The court should strive to avoid a construction which will tend to make the statute unjust, oppressive, unreasonable, absurd, mischievous, or contrary to public interest.”); *Cosby v. Commonwealth*, 147 S.W.3d 56, 58-59 (Ky. 2004) (“General principles of statutory construction hold that a court must not be guided by a single sentence of a statute but must look to the provisions of the whole statute and its object and policy. . . . In addition, “[w]e have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion.”); and *Workforce Dev. Cabinet v. Gaines*, 276 S.W.3d 789 (Ky. 2008) (“When a court construes statutory provisions, it must presume ‘that the legislature did not intend an absurd result.’”).

There are several examples of absurd consequences based upon the Court of Appeals' interpretation of KRS 441.245(3). Pursuant to the Court of Appeals' interpretation, the salaries of jailers throughout Kentucky will be ever-increasing, regardless of any events or considerations that a fiscal court may deem relevant. Whether precipitated by an economic downturn, a change in technology, a decrease in county population/crime, an opening or closure of a life-safety jail, or a contraction of the duties of the office, **the fiscal courts will be incapable of determining the fair and appropriate salary that it believes its respective jailers should earn.** The absurdity of this interpretation can further be seen from the consequences that would stem from a runaway fiscal court. A fiscal court, for political reasons, could set the salary of a jailer, who does not operate a full-service jail, at the maximum amount of \$7,200.00<sup>3</sup> under the first sentence of KRS 441.245(3). For example, this salary would equal \$71,955.23 in 2014 dollars. Based upon the Court of Appeal's interpretation, the citizens living in this county would be unable to change this result. The electorate could elect new magistrates but the new magistrates could never correct this injustice.

Moreover, it is now evident that KRS 441.245(3)'s meaning is ambiguous. "[A] term is 'ambiguous' when 'it is reasonably capable of being understood in more than one sense.'" *Gilbert v. Commonwealth*, 291 S.W.3d 712, 716 (Ky. App. 2008) (citation omitted). Here, the Court of Appeals' interpretation of the statute, based on its plain reading of the statute, is in direct conflict with the interpretation given by the lower court. These two court opinions all too well reflect the ambiguity in this matter. Where a statute is ambiguous, the court is directed to consider "extrinsic aids such as the statute's legislative history or the canons of construction" to construe the statute according to the legislature's intent. *Spencer v. Estate of Spencer*, 313 S.W.3d 534, 541 (Ky. 2010).

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<sup>3</sup> See KRS 64.527 and Ky. Const. 246.

Accordingly, since the Court of Appeals' Opinion presents a conflict with longstanding and firmly-established precedent regarding statutory interpretation, it should be reversed and this Court should clarify the meaning of KRS 441.245(3) based on its legislative history and its construction when harmonized with related statutes.

**V. THE LEGISLATIVE HISTORY OF KRS 441.245 ESTABLISHES THAT THE FISCAL COURT HAS THE AUTHORITY TO SET THE SALARY OF JAILER FROM TERM TO TERM**

The legislative history confirms the intent of the General Assembly to vest control over local county jailers, who do not operate a full-service jail, to the fiscal court. The legislative history and express language of KRS 441.245, KRS 64.527 and KRS 64.5275 make clear that all jailers' salaries, whether or not they operate a full-service jail, are subject to change from term to term. "The rule is that statutes in *pari materia* should be construed together and, if possible, should be construed so as to harmonize and give effect to provisions of each. This is especially true of two Acts passed at the same legislative session and which became effective on the same day." *Economy Optical Co. v. Kentucky Bd. of Optometric Examiners*, 310 S.W.2d 783, 784 (Ky. 1958). The relevant amendments and codifications of KRS 441.245, KRS 64.527 and KRS 64.5275 were approved on the same day, April 14, 1998.

First, KRS 441.245 was amended as follows:

(1) The jailer who operates a full service jail shall receive a monthly salary pursuant to any salary schedule in KRS Chapter 64 applicable to jailers operating a full service jail from the county jail operating budget.

(2) No jailer holding office in the Commonwealth on or after January 6, 1999, shall receive an annual salary of less than twenty thousand dollars (\$20,000).

(3) The salaries of jailers who are not subject to any salary schedule in KRS Chapter 64 may be set at a higher level if the salary does not exceed the constitutional salary limit applicable

to jailers. These jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to the provisions of Section 2 of this Act.

~~[In recognition of the increased duties and responsibilities of the office of jailer, jailers holding office on July 1, 1982, shall be entitled to a level of compensation in calendar year 1982 which shall be equal to the compensation of jailer in calendar year 1981 as adjusted for the change in the consumer price index during calendar year 1981 or \$12,000, whichever is greater. The fiscal court may establish a higher level of compensation for the jailer, provided, however, that in no event shall the jailer's compensation exceed the maximum compensation allowable for county officials under KRS 64.527. In the event that a jail was closed during calendar year 1981, the secretary of finance may, upon proper documentation by the jailer, direct that a prior calendar year's level of compensation be used as a basis for setting the jailer's compensation pursuant to this section.]~~

~~(3) — The jailer's monthly salary for the period July, 1982, through December, 1982, shall be the jailer's compensation for calendar year 1982 as provided in subsection (2) of this section less the jailer's earnings for January through June, 1982, divided by six (6).~~

~~(4) — Except as provided in subsection (5) of this section, the jailer's compensation for 1983 and subsequent years shall equal the prior year's compensation and may be adjusted by the fiscal court for the change in the prior year's consumer price index.~~

~~(5) — Effective January 6, 1986, the salary for jailers in any county where there is no jail and the jailer does not transport prisoners shall be twelve thousand dollars (\$12,000) per year.]~~

See 1998 Kentucky Laws Ch. 595 (S.B. 396), attached hereto as **Exhibit 4**.

At the same time as the legislature repealed the old version of KRS 441.245, it amended KRS 64.527 as follows:

In order to equate the compensation of ~~county judges/executive, county clerks, sheriffs,~~ jailers who do not operate full service jails, justices of the peace, county commissioners and coroners with the purchasing power of the dollar, the Department of Local Government ["DLG"] shall compute . . . the annual increase or decrease in the consumer price index of the preceding year . . . . The [DLG] shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled pursuant to the increase or decrease in the consumer price index. Upon notification from the DLG, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the DLG.

(See Exhibit 4).

The clear language of KRS 64.527 reveals that the fiscal courts, who are charged by law to fix the compensation, are provided with the "increase or decrease" in the consumer price index by the DLG, and are authorized to "set" the annual compensation at a rate no higher than the change in the value of the dollar. The first sentence of KRS 441.245(3) grants the authority to "set" the salary level of jailers between the floor and the constitutional maximum, as adjusted by an increase or decrease in the value of the dollar. The second sentence of KRS 441.245(3) implicates the "rubber dollar" doctrine to allow a constitutional "adjustment" of that salary level. Under the Kentucky Constitution salaries may only be set prior to the term and cannot change during the term. Because the Supreme Court of Kentucky has only allowed an "upward adjustment" of a salary during a term of office, the second sentence of KRS 441.245(3) allows the fiscal court to "adjust" the salary under KRS 64.527, but sets the floor of that adjustment at the "prior year's level." Without this restriction, the fiscal court, during a term of office, could adjust the salary downward pursuant to KRS 64.527, which would be an unconstitutional "change" in salary.<sup>4</sup>

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<sup>4</sup> Sections 161 and 235 of the Kentucky Constitution do not allow the compensation of a public official to be changed during his term in office. However, Kentucky courts have determined that an **increase** in a

Notwithstanding this clear use of the word “set” in the first sentence and “adjust” in the second sentence of KRS 441.245(3), the Court of Appeals’ interpretation of KRS 441.245(3) removes the power of Kentucky’s fiscal courts to “set” the salary from term to term, whether the salary would be set at a higher or lower level. It is a canon of interpretation that sentences within a statute, and related statutes, should be harmonized to give effect to each sentence and statute. *See Economy Optical Co.*, 310 S.W.2d at 784; see also *Jefferson County Bd. of Educ. v. Fell*, 391 S.W.3d 713, 720 (Ky. 2012).

The Garrard Circuit Court properly harmonized the first and second sentences of KRS 441.245(3) with each other and harmonized KRS 441.245(3) with KRS 64.527, by holding that the first sentence authorizes a fiscal court to “set” the salary of jailers at a range between the statutory floor and the constitutional maximum (as determined by the DLG pursuant to KRS 64.527). (See **Exhibit 2**). The second sentence of KRS 441.245(3) does not restrict this important and necessary power of the fiscal courts, but rather, implicates the “rubber dollar” doctrine to allow an “adjustment” of the salary level to equate the purchasing power of the dollar.

Further, the use of the phrase “prior year’s *level*” is also significant in understanding the legislature’s intent and the change that occurred with the repeal of the pre-1998 statute. As stated *supra*, KRS 441.245(3) and KRS 64.5275 were codified at the same time. (See **Exhibit 4** and 1998 Kentucky Laws Ch. 610 (H.B. 810), attached hereto as **Exhibit 5**). KRS 64.5275 controls the salary of full-service jailers and provided, at the time of its codification, as follows:

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public officer’s salary during his term does not violate the Kentucky Constitution, provided the **increase** is based upon a change in the value of the dollar. *See Carey v. Washington Cnty. Fiscal Court*, 575 S.W.2d 161, 163 (Ky. App. 1978).

The salary schedule for . . . jailers who operate a full service jail . . . provides for nine (9) *levels* of salary based upon the population of the county in the year prior to the election of the officials . . . . To implement the salary scheduled, the [DLG] shall, by November 1 each year preceding the election of county officials, certify for each county the population group applicable to each county . . . . For purposes of this section, the salary schedule . . . shall remain as determined by the [DLG] pursuant to this section, regardless of changes in the population . . . that may occur *during the term* . . .

(See **Exhibit 5**) (emphasis added). Thus, the DLG sets the salary for all jailers who operate a full-service jail at a *level* for all four (4) years of a term based upon population and the value of the dollar prior to the election year with automatic increases each year of the term. (See KRS 64.5275(2), (3)). KRS 64.5275(4) implicates the application of the “rubber dollar” doctrine and only allows an **“increase”** in salary during the term based upon the increase in the consumer price index, while between terms the DLG is required to set the salary based upon the “salary schedule” as adjusted by the **“increase or decrease”** in the consumer price index or changes in population. (See KRS 64.5275(2), (4)).

This is the exact same application used for jailers who do not operate a full-service jail. The use of the term “level” indicates the legislature’s intent that KRS 441.245(3) applies to the salary set for the current term and thus it must equal the prior year’s level that was set for the term. Further, the rubber dollar doctrine was meant to apply the same way in KRS 441.245(3) as it does in KRS 64.5275. The second sentence of KRS 441.245(3) and KRS 64.527, when read together, provide for an upward “adjustment” of the salary during the term, while the first sentence of KRS 441.245(3) when read with KRS 64.5275, addresses the power and authority of the fiscal courts and the responsibility of the DLG to set the salary from term to term. There is no reason to read these statutes differently when they were adopted at the same time.

Nevertheless, the Court of Appeals' interpretation of KRS 441.245(3) does just that. The court's decision precludes the fiscal court from setting the salary of the jailer from term to term and vitiates the fiscal court's statutory authority to "[r]egulate and control the fiscal affairs of the county." (See KRS 67.080(1)(c)). Its flawed interpretation leads to an ever-increasing salary for jailers regardless of any changes in circumstances or duties and places a jailer in a county which does not operate a full-service jail in a better financial position than a jailer operating a full-service jail. A jailer who operates a full-service jail can have his salary reduced term to term based upon a decrease in population or a decrease in the consumer price index. (See KRS 64.5275(2), (3)). However, under the Court of Appeals' interpretation, the jailer who does not operate a full-service jail can never have his salary reduced from term to term, for a change in population, for changes in circumstances or due to a decrease in the consumer price index. This interpretation is absurd and will result in unreasonable salaries to jailers who do not operate full-service jails when circumstances change. This interpretation further removes the power of the fiscal courts to protect the taxpayers when these changes occur. Accordingly, the Court of Appeals should be reversed and this Court should appropriately harmonize KRS 441.245, KRS 64.527 and KRS 64.5275.

**VI. THE COURT OF APPEALS' IMPROPERLY RELIED UPON A CASE WHICH IS IRRELEVANT SINCE THE CASE INTERPRETED A *REPEALED* VERSION OF KRS 441.245.**

Incredibly, the Court of Appeals improperly relied upon *Wallace v. King*, 973 S.W.2d 485 (Ky. App. 1998), which is not applicable to our case. *Wallace* interpreted *repealed* sections of KRS 441.245 regarding jailer salaries and is no longer relevant or controlling. Yet, the Court of Appeals relied heavily on this case in its decision.

The Court of Appeals' reliance on *Wallace* is misplaced due to significant changes in the law. Under the old law, once the compensation was set in 1982 by the fiscal courts it could not be changed. Specifically, KRS 441.245(4) provided "[e]xcept as provided in subsection (5) of this section, the jailer's compensation for 1983 *and subsequent years* shall equal the *prior year's compensation* and may be adjusted by the fiscal court for the change in the prior year's consumer price index." (emphasis added). The old law set the jailer's "**compensation for 1983 and subsequent years**" at the 1982 compensation and only allowed for adjustments for the "**change in the prior year's consumer price index.**" (See KRS 441.245(4)). This meant that jailers in a particular county would make no more than the value of the dollar in 1982 for services provided.

The 1998 law completely changed the compensation for jailers in Kentucky. Most significantly, the section of the old law that fixed the salary of all jailers (other than bailiffs) at the 1982 compensation was removed by deleting KRS 441.245(4) in its entirety. The General Assembly also deleted KRS 441.245(5) which set bailiff salaries at \$12,000.00, with no adjustments for the change in purchasing power. The new law further elevated jailers who operate a full-service jail to a statewide office, and, thereby significantly increased those jailers' salaries in 1998. (See KRS 441.245(1)). The new law authorized the fiscal courts to set the salary of jailers who do not operate a full-service jail at any level of compensation between the statutory minimum of \$20,000.00 and the constitutional maximum. (See KRS 441.245(2), (3)). This included salaries for jailers performing only bailiff duties, or operating life-safety jails. The new law provided the fiscal courts with broad authority to set salaries of jailers depending on the diverse duties that could be assigned to jailers who do not operate a full-service jail.

Nevertheless, despite these significant changes, the Court of Appeals still improperly utilized *Wallace* as the guiding authority for this case and held as follows:

Here, the plain meaning of [KRS 441.245(3)] is inescapable. To paraphrase the *Wallace* court, whatever sum was the jailer's salary the prior year should continue thereafter—with the only change permitted consisting of an upward escalation to allow for inflation in reference to the consumer price index.

Furthermore, even if “the prior year” could be considered a latently ambiguous phrase (and it is not), it is the same phrase this court interpreted in *Wallace* to mean *the prior year*—not, as urged by Garrard County, “the prior year so long as that prior year was within the current term of office and not within a preceding term of office.” And, by including this same language in the current version of KRS 441.245(3), the General Assembly is presumed to have intended for the same meaning to apply.

(See **Exhibit 1** at 12) (emphasis in original).

The Court of Appeals' reasoning is flawed and should be reversed. First, it incorrectly determined that the current version of KRS 441.245(3) utilizes the same phrase that was interpreted by the court in *Wallace* and thereby ignored the significance of the fact that the General Assembly used **new terms** in KRS 441.245(3) as opposed to adopting the old terms of the repealed law of KRS 441.245(4). The General Assembly uses terms such as “no salary shall be less than \$20,000,” and terms that allowed the fiscal court to “set” salaries at “levels” not greater than the constitutional maximum. This is an empowering statute as opposed to the rigid and restrictive statute of 1983. The old law fixed the salaries of jailers for all time by using words such as “the salary for 1983 and subsequent years shall equal the prior year's compensation.” The only adjustment allowed under the old law was a change in the consumer price index. One shoe did not fit all due to the diverse roles and duties of jailers. Therefore, the law fundamentally changed in 1998.

The first sentence of KRS 441.245(3) empowers the fiscal courts to set the salary. The second sentence clearly incorporates the “rubber dollar” for adjustments. The meaning of a “prior year's level” when harmonized with the other related statutes codified at the same time, as

explained *supra*, takes on a new meaning that is distinct from the pre-1998 version of KRS 441.245. Specifically, KRS 441.245(3) now reads that the “salaries shall at least equal the *prior year’s level*.” (emphasis added). The term “level” is used in both KRS 441.245 and KRS 64.5275. The “level” of a salary is set from term to term. The “level” may be adjusted during the term based only upon an increase in the consumer price index. (See KRS 441.245(3), 64.527 and 64.5275).

Next, in *Wallace*, the court interpreted the old version of KRS 441.245 and noted that the statute provides for the reduction of a jailer’s salary only in cases where, pursuant to subsection (5) (now repealed), there is no jail and the jailer does not transport prisoners, *i.e.* the jailer acts as a bailiff. (*Id.* at 487). Thus, the old version of KRS 441.245 allowed a reduction of salary when a jail closed and/or a jailer no longer transported prisoners. In the case *sub judice*, the Court of Appeals’ interpretation of KRS 441.245(3) will prevent a fiscal court from reducing the salary of a jailer who was a transporting officer during one term, but only performs bailiff duties during the next term. Other absurd consequences flow from the Court of Appeals’ reading of KRS 441.245(3). For example, a fiscal court in a county that operates a life-safety jail could not reduce the jailer’s salary from term to term if the life-safety jail closes. Conversely, if a county opened a life-safety jail, the county could not increase the jailer’s salary for increased duties, but would only be able to adjust it by the change in the consumer price index. Thus, the Court of Appeals’ interpretation gives the local government **no** authority to reduce the salary of a jailer from term to term for **any** change in circumstances.

The Court of Appeals failed to review the legislative history relating to the repeal of the pre-1998 version of KRS 441.245 and thereby failed to take into account that, by deleting subsections (4) and (5) of KRS 441.245, the General Assembly ceded authority to fiscal courts to

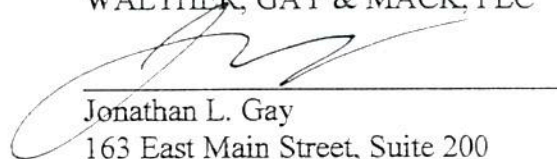
determine the salary of jailers, who do not operate a full-service jail, at any level between the statutory minimum and the constitutional maximum. Consequently, the Court of Appeals' reliance on *Wallace* is misplaced due to the significant changes made to KRS 441.245 that were not considered by the court in *Wallace*. Applying the reasoning established in *Wallace* to the current version of KRS 441.245 leads to an absurd result that is contrary to the legislative intent and therefore the Court of Appeals should be reversed.

### CONCLUSION

The Court of Appeals erred in determining that Appellants do not have the authority to set the salary of the Garrard County Jailer from term to term. As set forth herein, the court: 1) misapplied the principles of statutory interpretation by interpreting KRS 441.245 in a manner that leads to an absurd result and is contrary to the legislative history of the statute; and 2) relied on a case that is irrelevant to this matter because the case interpreted a now-repealed version of KRS 441.245. The Court of Appeals' misinterpretation of KRS 441.245(3) and misplaced reliance upon a repealed statute from the *Wallace* decision has far-reaching consequences throughout Kentucky and leads to an unjust result whereby local governments can **never** change the salaries of jailers even when the duties of jailers change. It is of paramount importance to fiscal courts in rural counties throughout this Commonwealth that this Court reverse the Court of Appeals and reinstate the findings of the Garrard Circuit Court which properly held that the Garrard County Fiscal Court has the statutory authority to set the salary of the Jailer from term to term and prior to any new term at any amount between the statutory minimum annual salary of \$20,000.00 and the constitutional maximum annual salary allowed to jailers in the Commonwealth of Kentucky.

Respectfully Submitted,

WALTHER, GAY & MACK, PLC

A handwritten signature in black ink, appearing to read 'Jonathan L. Gay', is written over a horizontal line.

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